APPEAL NO. 022472
FILED NOVEMBER 12, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 19, 2002. The hearing officer determined that the appellant's (claimant) compensable right knee injury of _____, does not extend to and include pancreatitis, and that he did not have disability beginning on October 20 and continuing through October 25, 2001, as a result of the compensable right knee injury of _____. The claimant appealed essentially on sufficiency of the evidence grounds, that the hearing officer elevated the claimant's burden of proof, and that the hearing officer failed to consider an aggravation of a preexisting condition. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable right knee injury in the course and scope of employment on _____. The claimant testified that he injured his right knee when he was repairing a natural gas pipe and as he squatted down under a railing to reach the platform his right knee popped. The claimant testified that his treating doctor, Dr. R, initially prescribed an anti-inflammatory medication, Vioxx, for his right knee; however Dr. R subsequently and reluctantly prescribed an inexpensive non-steroidal anti-inflammatory medication, Lodine, because the carrier refused to pay for Vioxx, an expensive medication. In a letter dated February 22, 2002, Dr. R stated that the carrier would not pay for Vioxx; that he did not recommend Lodine be taken by the claimant since he had "a history of difficulty taking nonsteriodal anti-inflammatories," and that "Lodine is not the best mediation due to [gastrointestinal] GI side effects and [the claimant's] history." The claimant stated that on the second day that he began to take Lodine, along with a sausage biscuit for breakfast, he suffered a pancreatic attack at work in which he became violently ill and began vomitting. The claimant stated that he previously had two pancreatic attacks in May 1999 (Memorial day weekend) and in February 2000. The claimant testified that according to his previous treating doctors his pancreatic attacks were due to alcohol consumption and his diet. On appeal, the claimant *essentially* contends that the compensable injury extends to and includes his pancreatitis, a preexisting condition that was aggravated by the treatment medication, Lodine, to his compensable right knee injury. The claimant contends that Lodine has a higher pancreatic side effect than Vioxx.

The Appeals Panel has held that when an injury is asserted to have occurred by way of "aggravation" of a preexisting condition, there must be evidence that there was a preexisting condition and that there was "some enhancement, acceleration, or worsening of the underlying condition. . . ." Texas Workers' Compensation Commission

Appeal No. 94428, decided May 26, 1994. The burden of proving that there is a compensable injury or aggravation of a preexisting condition is on the claimant. The hearing officer determined that the "Claimant's claimed pancreatitis was a pre-existing condition and an ordinary disease of life for which the general public was exposed outside of employment; and was neither aggravated, enhanced, accelerated, nor worsened by the medical treatment and prescribed medications, including Lodine, [that the] Claimant received as a result of Claimant's compensable right knee injury on _____." The Appeals Panel has held that "an aggravation of a pre-existing condition is an injury in its own right." Texas Workers' Compensation Commission Appeal No. 94428, decided *supra*. The hearing officer was not persuaded by the medical evidence and the claimant's testimony that: (1) the claimant established a causal relationship between the claimant's employment and the pancreatitis he suffered at work on _____; and (2) the claimant established that the pancreatitis was either directly caused, or indirectly caused, or naturally resulted from the compensable right knee injury of _____.

The hearing officer did not err in determining that the claimant's compensable right knee injury of _____, does not extend to and include pancreatitis, and that he did not have disability beginning on October 20 and continuing through October 25, 2001, as a result of the compensable right knee injury of _____. Extent of injury and disability are factual questions for the fact finder to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The evidence supports the hearing officer's factual determinations. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In regard to the claimant's assertion that he was held to a higher burden of proof, the record does not support this assertion. The hearing officer determined that the claimant did not meet his burden to prove that his compensable injury extends to include pancreatitis. We perceive no error. Further, in regard to the claimant's assertion that the hearing officer did not consider all of the evidence. We note that the hearing officer is not required to detail all of the evidence both supporting and contradicting his determinations. *See* Texas Workers' Compensation Commission Appeal No. 93164, decided April 19, 1993 (Unpublished), and cases cited therein. We are satisfied that, as he states in his decision, the hearing officer based his findings of fact and conclusions of law on all of the evidence presented, despite the fact that a particular piece of evidence was not specifically discussed in the decision.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

_____
Veronica Lopez
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Robert W. Potts
Appeals Judge